IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1834 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
VIRABHAI L MAKWANA - Respondent(s)

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Appearance :
MR DIPEN A DESAI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 07/09/2007

ORAL JUDGMENT

1. Shri Dipen Desai, learned counsel for the petitioner; none for the respondent though served.

2. The petitioner, being aggrieved by the award dated 1.4.2000 passed by the Industrial Tribunal, Ahmedabad in Reference [IT] No. 24 of 1997, is before this Court with a submission that the Court below was unjustified in interfering on the question of quantum of punishment despite holding that the charges levelled against the respondent workman stood proved.

3. The short facts necessary for disposal of the present writ application are that, a charge-sheet was issued to the respondent workman with an allegation that on 25.2.94, he had received money from the passengers but did not issue tickets with bad intention. It was also alleged that the workman did not collect fare from some of the passengers nor issued tickets and this all was done by the workman with an intention to have illegal gains.

4. In the departmental inquiry, the witnesses including some passengers were examined and the disciplinary authority found that the charges were proved. Instead of order of termination,

punishment of withholding of five increments with cumulative effect was awarded. Being aggrieved by the said award of punishment, the workman came to the Industrial Court. From para-8 of the judgment, it would clearly appear that the parties to the dispute did not lead any evidence but the workman requested the Industrial Court to decide the matter afresh on basis of the evidence available in the inquiry proceedings. The Industrial Court, after going through the entire evidence, recorded a finding that there was no ill-intention on the part of the workman but inaction or non-action on the part of the workman could be taken to be negligence on his part. Being aggrieved by the said award, the Industry is now before this Court.

5. Shri Dipen Desai, learned counsel for the petitioner, after taking me through the award submitted that once it was established during course of the inquiry that the wrong was committed by the workman and such wrong was misconduct, then, the Labour Court/Industrial

Court could not interfere in the quantum of punishment. He submitted that whether inaction/non-action was negligence or misconduct would depend upon a finding after appreciating the evidence and as in this case, Inquiry Officer/disciplinary authority had the fullest jurisdiction to appreciate the evidence and record a finding, the Industrial Court, to take another view in the matter, could not re-appreciate the evidence.

6. From the findings recorded by the Industrial Court, it would clearly appear that after re-appreciating the entire evidence, it had drawn a presumption in favour of the workman that inaction/non-action on the part of the workman was not misconduct but was an act of negligence.

7. In the opinion of this Court, the learned Industrial Court could not re-appreciate the evidence to come to yet another finding of fact. The Court below could have reappreciated the question of quantum of punishment if it was of the opinion that the punishment was shockingly disproportionate to the alleged

misconduct. In the present case, inaction/non-action was not mere negligence but was, in fact, misconduct as found by the Inquiry Officer. Taking into consideration the totality of the circumstances and the limits of jurisdiction of the Industrial Court, I hold that the Industrial Court was not entitled to interfere in the matter nor could it reduce the punishment of withholding five increments with cumulative effect to withholding of one increment only.

8. The award made by the learned Industrial Tribunal deserves to and is accordingly quashed. The petition is allowed. No costs. Rule is made absolute accordingly.

[R.S. GARG, J.]

pirzada/-